

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR APPLICATIONS

SCANNED

September 3, 2015

To: Jonathan D. Aurelia, Esq., Chen & Aurelia, LLC, 260 Constitution Boulevard, Lawrenceville, Georgia
30046

Docket Number: Style: Jeannie Ann Haight v. The State

SCANNED

9.3.15 LA

Your document(s) is (are) being returned for the following reason(s).

1. Your Application was not accompanied by the statutory filing fee, \$300.00 civil; \$80.00 criminal, or a sufficient pauper's affidavit, Appointment of Counsel or affidavit of counsel. OCGA§5-6-4 and Rule 5 Please be advised that your pauper's affidavit should be notarized by a notary public.
2. Portions of the record included were not tabbed and indexed. Rules 30 (e) and 31 (c).
3. A stamped "filed" copy of the trial court's order to be appealed was not attached to your Application. Rules 30 (b) and 31 (e)
4. A stamped "filed" copy of the Certificate of Immediate Review was not attached to your Interlocutory Application. Rule 30(b)
5. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
6. There were an insufficient number of copies of your document. Rule 6
7. No Certificate of Service accompanied your document(s). Rule 6 You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
8. Your Certificate of Service did not include the complete name and /or mailing address of each opposing counsel and pro se party. Rule 1(a) and 6
9. Your document exceeds page limits. Rules 24(f) , 30(e) and 31(c)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
11. No extension of time for filing an interlocutory application will be granted . Rule 30 (g) . No extension of time will be granted for filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application.
12. The type font was smaller than 10 characters per inch; type was not double-spaced or/and type was on both sides of the paper. Rules 1(c), 24(b), 37(a) and 41(b).
13. Your motions were submitted in an improper form (joint, compound, or alternative motions in one document). Rule 41 (b)
14. **Electronic filing is mandatory in this Court. The following Rule 46 became effective January 1, 2015.**

XXII. ELECTRONIC FILING OF DOCUMENTS

Rule 46. Electronic Filing of Documents.

Counsel is required to use the Court's electronic filing system and to follow the policies and procedures governing electronic filing as set forth in the Court's electronic filing instructions. The Clerk of Court may grant a request for exemption from mandatory electronic filing for good cause shown. An adverse decision by the Clerk of Court may be appealed by motion to the Court via a paper filing.

Rule passed October 21, 2014 - effective January 1, 2015

CHEN & AURELIA, LLC
JONATHAN D. AURELIA
260 CONSTITUTION BOULEVARD
LAWRENCEVILLE, GEORGIA 30046

August 28, 2015

Clerk, Court of Appeals of Georgia
Suite 501
47 Trinity Avenue, S.W.
Atlanta, Georgia 30334.

FILED IN OFFICE
AUG 31 2015
COURT CLERK
CLERK COURT OF APPEALS OF GA

RE: State of Georgia v. Jeannie Ann Haghight
Application for Discretionary Appeal

Dear Clerk of Court:

I have enclosed an Appointment Order (in lieu of fee), an original Application for Discretionary Appeal, and two copies with this letter. Please stamp-file one of the copies and return to me in the enclosed self-addressed stamped envelope. Thank you.

Sincerely,



Jonathan D. Aurelia
Attorney for the Defense
Ga. Bar No. 028799
260 Constitution Blvd.
Lawrenceville, Ga. 30046
678.208.3268 (office)
678.208.3269 (fax)

7/24/15 (KA)
Left a message
with secretary
for Mr. Aurelia
to file his application
on-line. (Rule
please return. 46)

2015 AUG 32 PM 3:19
COURT OF APPEALS OF GEORGIA

CHEN & AURELIA, LLC
JONATHAN D. AURELIA
260 CONSTITUTION BOULEVARD
LAWRENCEVILLE, GEORGIA 30046

August 28, 2015

Clerk, Court of Appeals of Georgia
Suite 501
47 Trinity Avenue, S.W.
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FILED IN OFFICE
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COURT CLERK
CLERK COURT OF APPEALS OF GA

RE: State of Georgia v. Jeannie Ann Haghighat
Application for Discretionary Appeal

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Sincerely,



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Ga. Bar No. 028799
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*7/2/15 (KAA)
Left a message
with secretary
for Mr. Aurelia
to file his application
on-line. (Rule 46)
Please return. 46*

RECEIVED IN FILE
2015 AUG 32 PM 3:19
LAWRENCEVILLE, GEORGIA
COURT OF APPEALS OF GA

IN THE GWINNETT JUDICIAL CIRCUIT

STATE OF GEORGIA

STATE OF GEORGIA

CASE # 13-B-2721-7

vs.

WARRANT

JEANNIE HAGHIGHAT

Applicant's Full Name

OFFENSE

PROBATION REVOCATION

Defendant's Telephone Number

APPOINTMENT OF COUNSEL FOR INDIGENT PERSON

<input checked="" type="checkbox"/>	SUPERIOR COURT	<input type="checkbox"/>	STATE COURT	<input type="checkbox"/>	MAGISTRATE COURT	<input type="checkbox"/>	PROBATE COURT	<input type="checkbox"/>	JUVENILE COURT	<input type="checkbox"/>	RECORDER'S COURT
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The person named above has satisfied the court that s/he is financially unable to employ an attorney and does not waive an attorney. The attorney designated below shall represent the person and the appointment shall remain in effect through all court in the circuit until the case is completed or another attorney is appointed by the court or retained.

JONATHAN AURELIA, ESQ.

[Appointed Attorney's Full Name]

260 CONSTITUTION BLVD.

[Appointed Attorney's Address]

LAWRENCEVILLE, GEORGIA 30046

[Telephone number]

SO ORDERED this 12th day of JUNE 20 15 .
NUNC PRO TUNC TO MAY 25, 2015.

Melodie Snell Conner

Honorable Melodie Snell Conner, Chief Judge
Gwinnett Superior Court

IN THE COURT OF APPEALS
STATE OF GEORGIA

FILED IN OFFICE
AUG 31 2015
COURT CLERK
CLERK COURT OF APPEALS OF GA

JEANNIE ANN HAGHIGHAT

Applicant,

-vs-

STATE OF GEORGIA,

Respondent.

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DOCKET NO.:

APPLICATION FOR DISCRETIONARY APPEAL

Jonathan D. Aurelia
Attorney for Applicant
Georgia Bar No. 028799
260 Constitution Blvd.
Lawrenceville, Ga. 30046

Jeannie Ann Haghighat, Applicant
Gwinnett County Detention Center
2900 University Parkway
Lawrenceville, Ga. 30043

RECEIVED IN OFFICE
2015 AUG 31 PM 3:20
CLERK COURT OF APPEALS OF GA

IN THE COURT OF APPEALS

STATE OF GEORGIA

JEANNIE ANN HAGHIGHAT

Applicant,

-vs-

STATE OF GEORGIA,

Respondent.

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DOCKET NO.:

APPLICATION FOR DISCRETIONARY APPEAL

COMES NOW the Applicant, Jeannie Ann Haghighat, by and through the undersigned counsel and, pursuant to O.C.G.A. §5-6-35, files her Application for Discretionary Appeal and in support thereof, respectfully shows the following:

PART ONE - STATEMENT OF THE CASE

Applicant Jeannie Haghighat entered guilty pleas to Theft by Shoplifting and Bail Jumping on August 19, 2014, and was sentenced to, inter alia, 9 years on probation. Applicant's probation officer brought a Petition for Modification/Revocation of Probation on July 21, 2015, alleging that Ms. Haghighat violated probation in that "the defendant committed the new offense(s) of Crossing State/County Guard Lines with Weapons, Intoxicants, Drugs

Without Consent - Felony, Possession of Use of Drug Related Objects, and Theft by Shoplifting, on or about March 26, 2015 in Newton County, Georgia." [see Petition, attached as Exhibit "A"]. Applicant had a hearing on the petition on July 31, 2015, at which time, probation withdrew the allegation that Applicant committed the new offense of "Crossing the Guard Line - Felony" and proceeded solely on Possession of Drug Related Objects and Theft by Shoplifting. At the conclusion of the hearing, the trial judge found by a preponderance of evidence that Applicant violated probation and, pursuant to O.C.G.A. §42-8-34.1(c), sentenced her to serve three years in confinement.

PART TWO - ENUMERATION OF ERRORS

JURISDICTIONAL STATEMENT

The Court of Appeals has jurisdiction in this appeal because jurisdiction is not exclusively reserved to the Supreme Court pursuant to the Georgia Constitution. Applicant specifically makes this Application for Discretionary Appeal pursuant to O.C.G.A. §5-6-35 (a) (5).

1. The State of Georgia failed to allege and prove that defendant committed a new felony offense of Theft by Shoplifting.

PART THREE - REASONS FOR GRANTING DISCRETIONARY APPEAL

A. This Court should grant Appellant's Application Discretionary Appeal because reversible error appears to exist adversely affecting substantial rights and freedom of the applicant.

B. The establishment of a precedent based on the facts of this case is desirable.

PART FOUR - ARGUMENT AND CITATION TO AUTHORITY

The probation officer's petition to revoke Applicant's probation alleged that "the defendant committed the new offense(s) of Crossing State/County Guard Lines with Weapons, Intoxicants, Drugs Without Consent - Felony, Possession of Use of Drug Related Objects, and Theft by Shoplifting, on or about March 26, 2015 in Newton County, Georgia." The first of those "Crossing the Guard Lines - Felony" was withdrawn by the state prior to the hearing and the state proceeded on the other two offenses. While probation had designated the first offense a felony, the petition did not designate in any way whether the Shoplifting offense was a felony or misdemeanor. Further, no amount of theft was proven by the state. After hearing evidence, the judge found by a preponderance of the evidence that defendant had committed a "new

felony offense" and, pursuant to O.C.G.A. §42-8-34.1 (c) revoked 3 years of applicant's probation.

Applicant believes that the judge erred in finding that she committed a new felony offense for 2 reasons. First, the petition alleges simply "Theft by Shoplifting" without designating whether it was a felony or misdemeanor. Applicant contends that the rule of lenity requires a finding that applicant committed a new misdemeanor rather than a felony. In Walker v. State, 289 Ga. App. 879 (2008), this Court held that "Pretermittting whether the rule of lenity applies in the context of a probation revocation, the rule does not apply in this case" because "First degree forgery requires, among other things, proof of the intent to defraud, which is not a required element of the false identification document offense."

The court further explained that "[t]he rule of lenity applies when a statute, or statutes, establishes, or establish, different punishments for the same offense, and provides that the ambiguity is resolved in favor of the defendant, who will then receive the lesser punishment." Here, however, there is no difference in the elements of the crime - misdemeanor shoplifting and felony shoplifting have the same elements, but very difference punishments depending on the defendant's criminal

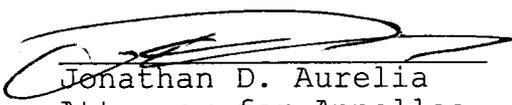
history. As such, the rule of lenity should apply and the ambiguity should inure to the applicant's benefit and, as such, application should only be subject to revocation for a misdemeanor offense.

Second, even if the rule of lenity does not apply, the State of Georgia has the discretion and authority to treat an offense as a misdemeanor even where it could, if it were so inclined, treat the offense as a felony.

PART SIX - CONCLUSION

Based upon the within and foregoing facts, arguments, and citations to authorities, this Court should grant Applicant's Application for Discretionary Appeal.

Respectfully submitted this 31st day of August, 2015.


Jonathan D. Aurelia
Attorney for Appellee
Georgia Bar No. 028799

260 Constitution Blvd.
Lawrenceville, Georgia 30046
(678) 208-3268 (office)
(678) 208-3269 (fax)
(770) 530-5297 (cell)
jdaurelia@bellsouth.net

IN THE COURT OF APPEALS

STATE OF GEORGIA

JEANNIE ANN HAGHIGHAT

Applicant,

-vs-

STATE OF GEORGIA,

Respondent.

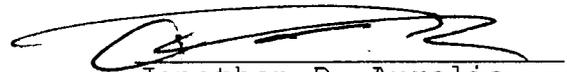
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DOCKET NO.:

CERTIFICATE OF SERVICE

This is to certify that I have served the District Attorney of this Circuit with a true and correct copy of the foregoing APPLICATION FOR DISCRETIONARY APPEAL by hand delivering same to Ms. Kylene Armond, Assistant District Attorney, Superior Court of Gwinnett County.

Respectfully submitted this 31st day of August, 2015.



Jonathan D. Aurelia
Attorney for Appellee
Georgia Bar No. 028799

260 Constitution Blvd.
Lawrenceville, Georgia 30046
(678) 208-3268 (office)
(678) 208-3269 (fax)
(770) 530-5297 (cell)
jdaurelia@bellsouth.net

Petition for Modification / Revocation of Probation
Department of Corrections / Probation Division

THE STATE OF GEORGIA
VS
Jeannie Ann Haight
SID# GA952972

DOCKET NUMBER 14-FT-00050-7
JUNE TERM 2014
SUPERIOR COURT OF Gwinnett COUNTY

Now comes Travis Holt, Probation Officer II, in the name of and on behalf of the State of Georgia and brings this action against Jeannie Ann Haight hereinafter called the defendant, and shows

I

That the defendant entered a plea of guilty to or was convicted of the offense (s) of CT I: Bail Jumping at the June term 2014.

II

That this court did sentence the Defendant to serve as follows: five (5) years, to serve the first one (1) year in confinement with the balance on probation; probation supervision fee waived, Application Fee waived, report to the Probation Office as directed, sentence to run concurrent with 13-B-2721-7.
Toll Time Began/Ended Dates: N/A.

III

That this Court, by proper order, however, permitted the Defendant to serve said sentence on probation, the terms and conditions of which are fully set forth in the copy of said sentence which is attached hereto, and marked "Exhibit A", and specifically incorporated herein.

IV

That the defendant has violated the terms and conditions of probation in the following particulars:

Condition #1: Do not violate the criminal laws of any governmental unit. In that, the defendant committed the new offense(s) of ~~Crossing State/County Guard Lines with weapons, Intoxicants, Drugs Without Consent-Felony, Possession or Use of Drug Related Objects, and Theft by Shoplifting, on or about March 26, 2015 in Newton County, Georgia.~~

Condition #4: Report to the Probation Supervisor as directed and permit said Supervisor to visit you at home or elsewhere. In that, the defendant failed to report upon release from custody on March 25, 2015 as directed, or on May 14, 2015 as directed, or anytime thereafter.

V

WHEREFORE, the State of Georgia prays that the citation for modification / revocation of probation be served on the Defendant and that the Defendant be directed to appear before this court on a day to be fixed by the Court and at that time to show cause why probation should not be modified or revoked.

This 21st day of July, 2015 Travis Holt
TRAVIS HOLT, PROBATION OFFICER II
GWINNETT JUDICIAL CIRCUIT

Having read and considered the foregoing petition, it is hereby ordered that the Defendant be served with a copy of same and that the Defendant show cause before the presiding Judge on the ___ day of ___, 20___ at ___ a.m./p.m. at the courthouse in _____ Georgia why said probation should not be modified/revoked.

This ___ day of ___, 20___

Melodie Snell Conner, Judge
Superior Court Gwinnett Judicial Circuit

FILED IN OFFICE OF CLERK SUPERIOR COURT GWINNETT COUNTY GA
JUL 8 12:01 PM '15
KIM/ANDY/RE/MODER. CLERK

with drawn by state

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing petition upon the defendant in person (or by registered mail).

This 27th day of July, 2015

Travis Holt
TRAVIS HOLT
GWINNETT JUDICIAL CIRCUIT

ACKNOWLEDGEMENT

I hereby acknowledge service of the foregoing petition. I further acknowledge I am aware that I may employ legal representation at said hearing and that if I am indigent, I have the right to representation at the hearing by the Circuit Public Defender or to be represented otherwise as the Court may direct.

This 27th day of July, 2015

Jeanne Hight
(Defendant)

Whereas pursuant to notice given to the defendant, a full hearing was conducted by the Court on the date aforesaid in accordance with O.C.G.A. 42-8-38 and the Court has adjudicated that the terms and conditions of probation had been violated as set forth in the following particulars:

- Technical violation of probation conditions or
- New non-violent misdemeanor offense

And Revocation/Modification is therefore limited in accordance with O.C.G.A. 17-10-1 (a)(3)(A) to a Probation Division Alternative or County Jail.

OR

New violent misdemeanor offense, or

Serious infraction of rules or regulations in a Community Corrections facility, or New felony offense.

Violation of Special Condition of Probation so worded and ordered at initial sentencing.

Violation of Special Condition of Probation ordered at a Revocation Hearing by Waiver/Consent.

And the defendant is therefore eligible in accordance with O.C.G.A. 17-10-1 (a)(3)(A) for Revocation/Modification of sentence to Prison, or a Probation Division Alternative, or County Jail.

NOW, THEREFORE, it is ordered and adjudged that the probation provisions in said original sentence be: Revoked in accordance with O.C.G.A. 42-8-38 and the defendant is required to serve 3 yrs. 0 months 0 days with credit for time served from

(date) Indicate: In the County Jail, County Correctional Institution, State Penal System or other such place as the Court may direct, OR

Continued on probation subject to the added further provisions that:

serve 3 years + terminate to Baker. This sentence shall run concurrent with 13-B-2727-17

So ordered, this the 31st day of JULY, 2015.

Restitution Owed

Melodie Snell Conner
~~Melodie Snell Conner~~, Judge Robert D. Walker, Jr.
Superior Court Gwinnett Judicial Circuit

RETENTION SCHEDULE: Upon completion place a copy in the probationer's file By *Defendant*

FILED IN COURT
CLERK SUPERIOR COURT
GWINNETT COUNTY
15 JUL 31 11:12:00
RICHARD ALEXANDER, CLERK

Petition for Modification / Revocation of Probation
Department of Corrections / Probation Division

THE STATE OF GEORGIA
VS
Jeannie Ann Haghighat
SID# GA952972

DOCKET NUMBER 13-B-2721-7
JUNE TERM 2014
SUPERIOR COURT OF GWINNETT COUNTY

Now comes Travis Holt, Probation Officer II, in the name of and on behalf of the State of Georgia and brings this action against Jeannie Ann Haghighat hereinafter called the defendant, and shows

FILED IN OFFICE OF
CLERK SUPERIOR COURT
GWINNETT COUNTY
15 JUL 31 11 20 14
MICHAEL ALEXANDER, CLERK

I

That the defendant entered a plea of guilty to or was convicted of the offense (s) of CT I: Theft by Shoplifting at the June term 2014.

II

That this court did sentence the Defendant to serve as follows: ten (10) years to serve the first one (1) year in confinement with the balance on probation, probation supervision fee, \$50.00 Application Fee, shall not enter the premises of Walmart, report to the Probation Office as directed, sentence to run concurrent with 14-FT-00050-7.

Toll Time Began/Ended Dates: N/A.

III

That this Court, by proper order, however, permitted the Defendant to serve said sentence on probation, the terms and conditions of which are fully set forth in the copy of said sentence which is attached hereto, and marked "Exhibit A", and specifically incorporated herein.

IV

That the defendant has violated the terms and conditions of probation in the following particulars:

Condition #1: Do not violate the criminal laws of any governmental unit. In that, the defendant committed the new offense(s) of Crossing State/County Guard Lines with Weapons, Intoxicants, Drugs Without Consent Felony, Possession or Use of Drug Related Objects, and Theft by Shoplifting, on or about March 26, 2015 in Newton County, Georgia. with Labram but in State

Condition #4: Report to the Probation Supervisor as directed and permit said Supervisor to visit you at home or elsewhere. In that, the defendant failed to report upon release from custody on March 25, 2015 as directed, or on May 14, 2015 as directed, or anytime thereafter.

V

WHEREFORE, the State of Georgia prays that the citation for modification / revocation of probation be served on the Defendant and that the Defendant be directed to appear before this court on a day to be fixed by the Court and at that time to show cause why probation should not be modified or revoked.

This 21st day of July, 2015 Travis Holt

TRAVIS HOLT, PROBATION OFFICER II
GWINNETT JUDICIAL CIRCUIT

Having read and considered the foregoing petition, it is hereby ordered that the Defendant be served with a copy of same and that the Defendant show cause before the presiding Judge on the ___ day of _____, 20___ at _____ a.m./p.m. at the courthouse in _____ Georgia why said probation should not be modified/revoked.

This _____ day of _____, 20____

Melodie Snell Conner, Judge
Superior Court Gwinnett Judicial Circuit

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing petition upon the defendant in person (or by registered mail).

This 22 day of July, 2015

TRAVIS HOLT
GWINNETT JUDICIAL CIRCUIT

ACKNOWLEDGEMENT

I hereby acknowledge service of the foregoing petition. I further acknowledge I am aware that I may employ legal representation at said hearing and that if I am indigent, I have the right to representation at the hearing by the Circuit Public Defender or to be represented otherwise as the Court may direct.

This 22 day of July, 2015

Jasmine Hightower
(Defendant)

Whereas pursuant to notice given to the defendant, a full hearing was conducted by the Court on the date aforesaid in accordance with O.C.G.A. 42-8-38 and the Court has adjudicated that the terms and conditions of probation had been violated as set forth in the following particulars:

_____ Technical violation of probation conditions or
_____ New non-violent misdemeanor offense

And Revocation/Modification is therefore limited in accordance with O.C.G.A. 17-10-1(a)(3)(A) to a Probation Division Alternative or County Jail.

OR

_____ New violent misdemeanor offense, or

_____ Serious infraction of rules or regulations in a Community Corrections facility
or New felony offense.

_____ Violation of Special Condition of Probation so worded and ordered at initial sentencing.

_____ Violation of Special Condition of Probation ordered at a Revocation Hearing or by Waiver/Consent.

And the defendant is therefore eligible in accordance with O.C.G.A. 17-10-1(a)(3)(A) for Revocation/Modification of sentence to Prison, or a Probation Division Alternative, or County Jail.

NOW, THEREFORE, it is ordered and adjudged that the probation provisions in said original sentence be: Revoked in accordance with O.C.G.A. 42-8-38 and the defendant is required to serve 3 yrs. months days with credit for time served from

(date) Indicate: In the County Jail, County Correctional Institution, State Penal System or other such place as the Court may direct, OR

Continued on probation subject to the added further provisions that:

*Serve 3 yrs then return to probation with same terms and conditions.
This sentence shall be concurrent with 17-ET-0050-7*

So ordered, this the 31st day of JULY 2015.

_____ Restitution Owed

Robert D. Walker
Melodie Snell Conner, Judge Robert D. Walker
Superior Court Gwinnett Judicial Circuit

RETENTION SCHEDULE: Upon completion place a copy in the probationer's file *By Des...*

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY
15 JUL 31 PM 12:04
RICHARD A. ALEXANDER, CLERK